



OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Termination of Action in the Section 301 Digital Services Tax Investigation of Turkey and Further Monitoring

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: On October 8, 2021, Turkey joined the United States and 134 other jurisdictions participating in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting in reaching a political agreement on a two-pillar solution to address tax challenges arising from the digitalization of the world economy. As part of Pillar 1, all parties agreed to remove existing digital services taxes and other relevant similar measures, and to coordinate the withdrawal of these taxes. On November 22, 2021, the U.S. Department of the Treasury (Treasury) issued a joint statement with Turkey regarding a transitional approach to Turkey's Digital Service Tax (DST) prior to entry into force of Pillar 1. The joint statement reflects a political agreement that DST liabilities accrued during the transitional period will be creditable in defined circumstances against future taxes due under Pillar 1. Based on the commitment of Turkey to remove its DST pursuant to Pillar 1 and on Turkey's political agreement to the transitional approach prior to Pillar 1's entry into force, the U.S. Trade Representative has determined to terminate the section 301 action taken in the investigation of Turkey's DST. In coordination with Treasury, USTR will monitor implementation of the removal of Turkey's DST as provided for under Pillar 1 and the transitional approach as provided in the joint statement.

DATES: The additional duties on products of Turkey are terminated as of November 28, 2021.

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice, please contact Benjamin Allen, Thomas Au, Patrick Childress, or Kate Hadley, Assistant General Counsels at (202) 395-9439, (202) 395-0380, (202) 395-9531, and (202) 395-3911, respectively,

Robert Tanner, Director, Services and Investment at (202) 395-6125, or Michael Rogers, Director for Europe at (202) 395-2684.

SUPPLEMENTARY INFORMATION:

I. Proceedings in the Investigation

For background on the proceedings in the section 301 investigation of Turkey's DST, please see prior notices including: 85 FR 34709 (June 5, 2020); 86 FR 2480 (January 12, 2021); 86 FR 16822 (March 31, 2021); and 86 FR 30353 (June 7, 2021).

On June 2, 2021, the U.S. Trade Representative determined to take action in the form of additional duties on certain products of Turkey and to immediately suspend those additional duties for up to 180 days. 86 FR 30353 (June 7, 2021).

II. OECD/G20 Negotiations

One-hundred forty-one jurisdictions are engaged in international tax negotiations under the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting. On October 8, 2021, Turkey joined the United States and 134 other participants in reaching political agreement on a Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (Oct. 8, 2021) at <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> (the OECD/G20 Two-Pillar Solution). The statement provides that Pillar 1 will be implemented through a multilateral convention. With respect to DSTs, the statement provides:

The Multilateral Convention (MLC) will require all parties to remove all Digital Services Taxes and other relevant similar measures with respect to all companies, and to commit not to introduce such measures in the future. No newly enacted Digital Services Taxes or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the MLC. The modality for the

removal of existing Digital Services Taxes and other relevant similar measures will be appropriately coordinated.

III. Joint Statement

On November 22, 2021, the United States and Turkey issued a joint statement that describes a political compromise reached on a transitional approach to existing Unilateral Measures while implementing Pillar 1. *Joint Statement from the United States and Turkey Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 Is in Effect*, U.S. DEP'T OF THE TREAS. (Nov. 22, 2021) at <https://home.treasury.gov/news/press-releases/jy0500>. Under the transitional approach in the joint statement, DST liability that accrues during the transitional period prior to implementation of Pillar 1 will be creditable in defined circumstances against future taxes due under Pillar 1. *See id.* (citing *Joint Statement from the United States, Austria, France, Italy, Spain, and the United Kingdom Regarding a Compromise on a Transitional Approach to Existing Unilateral Measures During the Interim Period Before Pillar 1 is in Effect*, U.S. DEP'T OF THE TREAS. (Oct. 21, 2021) at <https://home.treasury.gov/news/press-releases/jy0419>). In return, the United States commits to terminating the existing section 301 trade action on goods of Turkey, and not to impose further trade actions against Turkey with respect to its existing DST until the earlier of the date the Pillar 1 multilateral convention comes into force or December 31, 2023. *Id.*

IV. Termination of Action

Section 307 of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2417), provides that “[t]he Trade Representative may modify or terminate any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken under section [301] of this title if . . . such action is being taken under section [301(b)] of this title and is no longer appropriate.” The U.S. Trade Representative has found that that the political agreement of Turkey to the OECD/G20 Two-Pillar Solution, which provides for the removal of DSTs upon entry into force of Pillar 1, and the transitional approach in the joint statement

provide a satisfactory resolution of the matters covered by the section 301 investigation of Turkey's DST. Accordingly, pursuant to section 307 of the Trade Act, the U.S. Trade Representative has determined that the suspended trade action in this investigation is no longer appropriate and that the action should be terminated.

The U.S. Trade Representative's determination was made in consultation with Treasury and considers the advice of the interagency Section 301 Committee, consultations with representatives of the domestic industry concerned, and public comments and advisory committee advice received during the investigation.

In order to implement the termination of the section 301 action in the investigation of Turkey's DST, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by the Annex to this notice.

V. Ongoing Monitoring

Section 306(a) of the Trade Act (19 U.S.C. 2416(a)) provides that "[t]he Trade Representative shall monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country to provide a satisfactory resolution of a matter subject to investigation. . . ." Section 306(b) (19 U.S.C. 2416(b)) provides that "[i]f, on the basis of the monitoring carried out under subsection (a), the Trade Representative considers that a foreign country is not satisfactorily implementing a measure or agreement referred to in subsection (a), the Trade Representative shall determine what further action the Trade Representative shall take under section [301(a)]." Pursuant to section 306(a) of the Trade Act, the U.S. Trade Representative, in coordination with Treasury, will monitor the implementation of the political agreement on an OECD/G20 Two-Pillar Solution as pertaining to DSTs, the commitments under the joint statement, and associated measures. Pursuant to section 306(b) of the Trade Act, if the U.S. Trade Representative, in consultation with Treasury, subsequently considers that Turkey is not satisfactorily implementing these political agreements or associated measures, then the U.S. Trade Representative will consider further action under section 301.

ANNEX

The U.S. Trade Representative has decided to terminate the additional duties under heading 9903.90.06 of the HTSUS on articles the product of Turkey, as provided for in U.S. notes 27(a) and 27(b) to subchapter III of chapter 99 of the HTSUS. The termination of these additional duties is effective on November 28, 2021.

In accordance with this determination, the U.S. Trade Representative has determined to modify the HTSUS by: (1) deleting U.S. notes 27(a) and 27(b) to subchapter III of chapter 99 of the HTSUS; and (2) by deleting HTSUS heading 9903.90.06. The modifications of the HTSUS are effective on November 28, 2021. Any provisions of previous notices issued in this investigation that are inconsistent with this notice are superseded to the extent of such inconsistency.

Greta Peisch,

General Counsel,

Office of the United States Trade Representative.

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